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VIA CERTIFIED MAIL

Notice of Violation of California Voting Rights Act per Cal. Elections Code Section 10010(e)

TO:
City Council c/o City Clerk
City of Chico
411 Main Street
Chico, CA 95928

DATE:
October 1, 2019

Dear City Council:

This letter, sent by certified mail, constitutes the written notice of violation specified in the California Elections Code Section 10010(e)(1).

I represent a prospective plaintiff in a potential lawsuit under the California Voting Rights Act ("CVRA"). As you know, the City of Chico ("Chico") utilizes an at-large election system for electing candidates to its seven-member city council. Chico' demographics are racially diverse, with about 17.7 percent of its residents being Latino. Voting within Chico is racially-polarized, which has resulted in minority vote dilution. Chico's minority voters have not had proper representation on the city council because of the at-large election system. Thus, Chico's at-large elections violate the California Voting Rights Act ("CVRA").

Courts have regularly found that at-large election systems violate voting rights laws. The U.S. Supreme Court observed that "at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. Thornburg v. Gingles, 478 U.S. 30, 47 (1986). "[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." Id. In recognition of this fact, the federal Voting Rights Act ("FVRA"), 42 U.S.C. Section 1973, specifically targets at-large election schemes. Gingles, 478 U.S. at 37.

California has enacted even stronger protections for minority voting rights than exist in federal law. Unlike the FVRA, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish a violation. Cal. Elections Code Section 14028 ("A violation of Section 14027 is established if it is shown that racially polarized voting occurs..."). A city's at-large method of election violates the CVRA when it impairs the ability of a protected class to influence the outcome of an election because of vote dilution of members of a protected class. Jauregui v. City of Palmdale, 225 Cal.App. 4th 781, 793 (2014) (citing Cal. Elections C. Section 14027). There is no requirement to prove intent on the part of the voters of elected officials to discriminate against a protected class. Cal. Elections Code Section 14028(d).

Moreover, other factors besides racially polarized voting can be probative of a CVRA violation, including but not limited to "the history of discrimination," "the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections," and "the use of overt or subtle racial appeals in political campaigns." Elec. C. Section 14028(e).

Chico's at-large election system dilutes the ability of Latinos — a "protected class" under the CVRA — to elect candidates of their choice in city council elections and to influence the outcome of the election.

Chico's current city council composition is telling. Of the seven sitting members of the city council, none are Latino.

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Furthermore, the recent election history in Chico demonstrates the insidious effects of racially polarized voting and vote dilution. In the most recent election in 2018, no Latino candidates ran for council. In 2016, a single Latino candidate, Mercedes Macias, placed dead last in a field of 11 candidates. That election also featured two other candidates with Latino surnames (Lorette Sanchez and Lisa Duarte), both of whom lost as well. In 2014, a Latina candidate Lupe Arim-Law placed fourth and failed to win a seat. In fact, according to publicly-available sources, it appears than only ONE Latino candidate has ***ever*** won election to the Chico city council.

Based upon demographic analysis and factual records, our demographer expert would have no problem demonstrating at trial that Chico is in violation of the CVRA.

At least one city has fought a CVRA claim all the way through trial and appeal — at great expense to the taxpayer — only to wind up having a court impose district-based elections. See Jauregui v. City of Palmdale, 225 Cal.App. 4th 781 (2014). After an expensive trial, the trial court ruled for the plaintiffs and imposed a district-based election system upon the Palmdale City Council. This was affirmed on appeal. Id. Plaintiffs were awarded millions of dollars of attorney's fees and costs.

The Elections Code was amended in 2016 to set forth procedures by which your council may voluntarily move to a district-based election system and thus bring Chico into compliance with the law. See generally Cal. Elections Code Section 10010. Pursuant to Section 10010, you have 45 days from today's date, or **November 16, 2019**, to take certain actions that demonstrate Chico's intent and specific plan to transition to district-based elections. If we do not receive a response by that date, we will be forced to seek judicial relief on behalf of our client and the residents of Chico.

Please contact my colleague Shauna Cunningham at Shauna@lawslo.com or (805) 369-2399. We look forward to hearing from you on or before November 4, 2019. We welcome a discussion about a voluntary change to the current unlawful election system utilized by Chico.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Matthew J. Rexroad

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VIA CERTIFIED MAIL

October 9, 2019

Randall Stone, Mayor
Deborah Presson, City Clerk
City of Chico
411 Main Street
Chico, CA 95928

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members. The City of Chico ("Chico" or "City") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within the City of Chico is racially polarized, resulting in minority vote dilution, and, therefore, the City's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of so-called "at-large" voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 ("*Sanchez*"). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles,* 478 U.S. 30, 46 (1986) ("*Gingles*"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to "ignore [minority] interests without fear of political

consequences"), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). "[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act ("FVRA"), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; *see also* Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, "[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965." *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered "restrictive interpretations given to the federal act." Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a "majority-minority district." *Sanchez,* at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. *See* Cal. Elec. Code § 14028 ("A violation of Section 14027 ***is established*** if it is shown that racially polarized voting occurs …") (emphasis added); *also see* Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 ("Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).")

To establish a violation of the CVRA, a plaintiff must generally show that "racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision." Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: "elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class." Elec. Code § 14028(a). The CVRA also makes clear that "[e]lections conducted prior to the filing of an action … are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action." *Id.*

Factors other than "racially polarized voting" that are required to make out a claim under the FVRA – under the "totality of the circumstances" test – "are probative, but not necessary factors to establish a violation of" the CVRA. Elec. Code § 14028(e). These "other factors" include "the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns." *Id.*

The City of Chico's at-large system dilutes the ability of Latinos (a "protected class") – to elect candidates of their choice or otherwise influence the outcome of the City's elections. As of the 2010 Census, Chico had a population of 86,187, Latinos comprising 15.45% of the City's population. Based on demographic trends in California generally, and in Chico particularly, the Latino proportion of Chico's population is likely larger now than was measured in the 2010 Census. Despite this significant proportion of the population, the Latino community has been historically underrepresented on the Chico City Council. Currently, for example, the Chico City Council is composed of seven non-Hispanic whites – no Latinos and no people of color. Therefore, not only is the contrast between the significant Latino proportion of the electorate and the complete absence of Latinos to be elected to the Chico City Council outwardly disturbing, it is also fundamentally hostile towards participation by members of the Latino community.

The City's recent election history is illustrative. In each of the City's elections over the past decade, at least one Latino was vying for a seat on the Chico City Council, and in each instance every Latino candidate was defeated by the non-Latino majority voting bloc. In 2018, James Aguirre ran for City Council and lost, despite significant support from the Latino community. In 2016, Loretta Torres, Lisa Duarte and Mercedes Macias ran for City Council and all three Latina candidates lost, despite significant support from the Latino community. Similarly, in 2014, Forough Maria Molina launched her campaign for City Council and, despite having support from the Latino community, Ms. Molina lost that election. In 2012, Lisa Duarte ran for Council and lost, despite significant support from the Latino community. In 2010, Mark Hererra announced his candidacy for City Council, received support from local Latino leaders and still he lost that election, despite significant support from the Latino community. These elections evidence a long history of vote dilution in Chico which is directly attributable to the City's unlawful at-large election system.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based

remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

More recently, after a 7-week trial, we also prevailed against the City of Santa Monica, after that city needlessly spent millions of dollars defending its illegal election system – far in excess of what was spent in the Palmdale litigation - taxpayer dollars which could have been more appropriately spent on indispensable municipal services and critical infrastructure improvements. Just prior to the trial in that case, counsel for the City of Santa Monica – Kahn Scolnick, a partner at Gibson Dunn & Crutcher LLP proclaimed that, "the reality is that if Santa Monica fails the CVRA test, then no city could pass, because Santa Monica is doing really well in terms of full representation and success of minority candidates." ("In Rare California Voting Rights Trial, Gibson Dunn Steps Up for Santa Monica", Law.com, August 1, 2018). Notwithstanding Mr. Scolnick's prediction, Plaintiffs succeeded in proving that Santa Monica's election system was in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Given the historical lack of representation of Latinos on the Chico City Council in the context of racially polarized elections, we urge the City to voluntarily change its at-large system of electing its City Councilmembers. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than November 29, 2019 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,

Kevin I. Shenkman